

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
Hans Kappelhoff) Group: 3671
Serial No.: 10/733,548)
Filed: December 11, 2003) Examiner: Kovacs, Arpad F.
Title: GATHERING AND PICKING DEVICE)

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This Pre-Appeal Brief Request For Review is being filed concurrently with a Notice of Appeal from the Examiner's decision dated September 11, 2007, finally rejecting Claims 1-6, all of the claims pending in this application. Claims 1, 2 and 4-6 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,119,443 (Rauch). Further, claims 1-6 have been rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2001/0003237 (Wolters et al.). The review panel is requested to review the legal and factual basis of the rejection for the reasons stated below.

Rejection of claims 1, 2 and 4-6 under Rauch as a reference is inept.

Rauch discloses a corn harvesting attachment including a feed region defined as region in which two adjacent conveying discs 1 come closest or the front and rear wedges formed by conveying discs 1. Behind each of the feed regions is a picking unit 6. Picking unit 6 consists of two picking plates 7, which form between them a picking gap 8 (column 3, lines 33-40).

In contrast claim 1, recites in part:

a picking gap defined by a stripper plate, the picking gap having an inlet for receiving standing plants and having a first side and a second side opposite the first side, the picking gap also having a length;

a first gathering element is arranged on the first side of the picking gap and is rotated about a predominately vertical first single axis, the first gathering element is provided with carrier elements ... for introducing the plant into the picking gap and for conveying the plants over at least part of the length of the picking gap;

a second gathering element is arranged on the second side of the picking gap opposite to the first gathering element, the second gathering element also rotated about a predominately vertical second single axis and are provided with carrier elements that are designed for ... conveying the plants over at least part of the length of the picking gap. (Emphasis added).

Rauch clearly defines the positioning of the conveying discs 1 in a feed region with a picking unit located behind the feed region. This construct does not disclose carrier elements positioned on the first and second gathering elements that convey the plant over at least a part of the length of the picking gap, which is clearly recited limitation of Applicant's claim 1. Further as can be seen in the drawings of Rauch, discs 1 are not positioned to convey the plants over at least a portion of the picking gap because disc 1 is in the feed region and not the picking region where the picking gap is located. Not only do the discs of Rauch not overlay the picking gap, but the disc(s), due to their positioning are disengaged from the plants as the plants enter the Rauch picking gap 8. In the Examiner's short description of what Rauch discloses there is no indication that the carrier elements convey the plants over at least a part of the length of the picking gap as is clearly claimed in Applicant's claim 1.

Rejection of claims 1-6 under Wolters et al. is inept.

Wolters et al. disclose a row-insensitive gathering device for an agricultural header including an upper feeding element 14 and a lower feeding element 16 that grasp and draw the plant into the crop-harvesting machine 12. Elements 14 and 16 are rotatably mounted on a single vertical axis and rotate in the same direction. Upper feeding element 14 is mounted above

snapping bar 24 and lower feeding element 16 is mounted beneath snapping bar 24 (paragraph 41).

In contrast claim 1, recites in part:

a picking gap defined by a stripper plate, the picking gap having an inlet for receiving standing plants and having a first side and a second side opposite the first side ...

a first gathering element is arranged on the first side of the picking gap and is rotated about a predominately vertical first single axis, the first gathering element is provided with carrier elements ... for introducing the plant into the picking gap and for conveying the plants over at least part of the length of the picking gap;

a second gathering element is arranged on the second side of the picking gap opposite to the first gathering element, the second gathering element also rotated about a predominately vertical second single axis and are provided with carrier elements that are designed for ... conveying the plants over at least part of the length of the picking gap. (Emphasis added).

In Wolters et al. there are two gathering devices on the same side of the picking gap.

Claim 1 clearly defines that a gathering element is located on each side of the picking gap. The picking gap is defined by a stripper plate having the gap therein. The gap is further defined as having an inlet for receiving the standing plants. For the word gap to have meaning it must exist between two elements, which are defined in Applicant's claim as two portions of the stripper plate with the gap existing therebetween. The gap is further defined as having a first side and a second side. This definition precludes defining two sides of the stripper plate such as a top and bottom since the gap defines the sides as being on each side of the gap. The stripper plate as its description implies is a plate having minimal thickness relative to its other special attributes. The gap defined is in the plate and it is this gap that has a first side and a second side. The use of the terms "gap" and "sides," as used in the claims, must be understood within the meaning of the specification and the drawings, which clearly indicate that the gap must be oriented to receive

standing plants and that the first and second sides of this picking gap can be clearly seen in Figs. 1 and 2 of Applicant's application.

In order for the Examiner to apply Wolters et al. the Examiner has used an understanding that the claims are referring to two sides of the stripper plate, and that the gathering elements are positioned on opposite sides of the stripper plate. However, claim 1 clearly indicates that the sides referred to are the sides of the picking gap, more particularly the claim includes references to the first side of the picking gap and the second side of the picking gap. Since the picking gap is defined as receiving standing plants the common understanding of this is that the gap exists in a somewhat horizontal plane so that it can receive standing plants that are generally in a vertical plane. The positioning of the gathering elements on each of the two sides of the picking gap then describes a separation of the gathering elements in the horizontal plane, not in the vertical plane as in Wolters et al.

Further, while the stripper plate itself clearly has a top side and a bottom side, the claim clearly indicates that the gathering elements are placed on the opposite sides of the gap not opposite sides of the plate. A gap, by definition is a space or a void bounded between two things. In Applicant's specification, drawings and the claims the two things that provide a boundary are two portions of the stripper plate with one portion of the stripper plate defining a boundary of one side of the picking gap and the other portion of the stripper plate defining the other boundary of the other side of the picking gap. In consideration of the common meaning of the word "gap" as well as that which is illustrated in Applicant's figures and discussed in the specification, the two gathering elements of Wolters et al., both the upper and lower gathering elements are located on a single side of the picking gap, not on each of the two sides of the picking gap as claimed by Applicant. It is this confusion of first and second sides of the stripper plate with the sides of the

gap, which has led to the misinterpretation of the claim and the application of the instant reference, by the Examiner.

Summary

For the foregoing reasons, Applicant submits that neither of the cited references teach, disclose or suggest the subject matter of the pending claims, and the Examiner's conclusions about the teachings of the prior art are incorrect. The review panel is requested to remove all of the rejections, and indicate the allowance of the pending claims. Reconsideration and allowance of the claims are hereby respectfully requested.

In the event Applicant has overlooked the need for an extension of time, an additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefor and authorizes that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

Should any question concerning any of the foregoing arise, the Examiners are invited to telephone the undersigned at (260) 897-3400.

Respectfully submitted,

/Max W. Garwood, Reg. No. 47589/

Max W. Garwood
Registration No. 47,589
Attorney for Applicant

MWG/dc/mb

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TAYLOR & AUST, P.C.
142 S. Main Street
P.O. Box 560
Avilla, IN 46710
Telephone: 260-897-3400
Facsimile: 260-897-9300